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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1947**

**No. 74514**

**CENTRAL GREYHOUND LINES, INC., OF NEW  
YORK, APPELLANT,**

**vs.**

**CARROLL E. MEALEY, JOHN F. HENNESSEY AND  
JOSEPH M. MESNIG, CONSTITUTING THE STATE  
TAX COMMISSION OF THE STATE OF NEW YORK**

**APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW  
YORK**

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**FILED DECEMBER 3, 1947.**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 745

CENTRAL GREYHOUND LINES, INC., OF NEW  
YORK, APPELLANT,

vs.

CARROLL E. MEALEY, JOHN F. HENNESSEY AND  
JOSEPH M. MESNIG, CONSTITUTING THE STATE  
TAX COMMISSION OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW  
YORK

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 7, 1947.

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[fol. 1]

**IN COURT OF APPEALS OF NEW YORK****CENTRAL GREYHOUND LINES, INC., of New York, Petitioner,**

vs.

**CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M. MESNIG, constituting the State Tax Commission of the State of New York, Respondents****STATEMENT UNDER RULE 234**

This is a proceeding initiated under Article 78 of the Civil Practice Act and the applicable provisions of the Tax Law to review a determination by the State Tax Commission. The proceeding was instituted by the service of a petition and notice of motion on the 17th day of February, 1943. The answer and return of the respondents was filed and served on February 23, 1943.

The Supreme Court, Albany County, by an order granted February 26, 1943, and thereafter filed in the Office of the Clerk of the County of Albany, ordered the proceeding transferred to the Appellate Division, Third Department, for disposition, pursuant to Section 1296 of the Civil Practice Act.

The Appellate Division, Third Department, unanimously affirmed the determination of the State Tax Commission by an order of affirmance dated September 13, 1943, and entered in the Office of the Clerk of the Appellate Division on November 13, 1943.

The Appellate Division, Third Department, denied leave [fol. 2] to appeal to the Court of Appeals by an order entered in the Office of the Clerk of the Appellate Division on January 14, 1944.

The Court of Appeals by an order dated March 2, 1944, granted the Appellant leave to appeal to the Court of Appeals.

There has been no change of parties or attorneys except that individual members of the State Tax Commission at the time the proceeding was started have been succeeded by Alger B. Chapman, Spencer E. Bates and Harry E. Clinton.



**IN SUPREME COURT OF NEW YORK, ALBANY COUNTY**  
**CENTRAL GREYHOUND LINES, INC., of New York, Petitioner,**

**VS.**

**CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M. MESNIG, constituting the State Tax Commission of the State of New York, Respondents**

**ORDER TRANSFERRING PROCEEDING—February 26, 1943**

Upon reading and filing the petition of Central Greyhound Lines, Inc., of New York, verified the 16th day of February, 1943, and the answer and return of Carroll E. Mealey, John P. Hennessey and Joseph M. Mesnig, constituting the State Tax Commission of the State of New York, duly verified the 23rd day of February, 1943,

Now, on motion of Bond, Schoeneck & King, attorneys for the petitioner and upon the consent of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for respondents herein, it is

Ordered, that the proceeding be and the same hereby is, transferred for disposition to a term of the Appellate Division of the Supreme Court in the Third Judicial Department, in accordance with the provisions of Section 1296 of the Civil Practice Act, to the end that the determination of the State Tax Commission herein may be reviewed both upon the law and upon the facts and if said decision and determination and the account audited and stated against the petitioner shall be found to be illegal or erroneous, they may be revised, corrected or annulled by the Court according to law.

Enter:

**Harry E. Schirick, Justice of the Supreme Court.**

The respondents herein consent to the entry of the within order and waive notice of settlement thereof.

**Nathaniel L. Goldstein, Attorney-General.**

**Dated: February 26, 1943.**

[fol. 4] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

NOTICE OF MOTION—February 16, 1943

Please Take Notice that on the annexed petition of Central Greyhound Lines, Inc., of New York, duly verified the 16th day of February, 1943, application will be made to the Supreme Court of the State of New York, at a Special Term thereof to be held at the County Court House in the City of Albany, New York, on the 26th day of February 1943, at the opening of Court on that day or as soon thereafter as counsel can be heard for the review by this Court of the determination of the State Tax Commission of the State of New York, made on or about January 27, 1943, upon an application made to it by Central Greyhound Lines, Inc., of New York, the petitioner herein, for the cancellation or reduction of an assessment made against the petitioner for taxes under Section 186-a of the Tax Law, to the end that a final order may be granted herein annulling such [fol. 5] determination of the State Tax Commission and directing the State Tax Commission to cancel or reduce such assessment in accordance with law together with such other and further relief as may be just and proper.

Dated: February 16, 1943.

Yours, etc., Bond, Schoeneck & King, Attorneys for  
Petitioner, Office & P. O. Address, 1400 State Tower  
Building, Syracuse, New York.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

CENTRAL GREYHOUND LINES, INC., of New York, Petitioner,

vs.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M. MESNIG, constituting the State Tax Commission of the State of New York, Respondents

PETITION—February 16, 1943

The petitioner complaining of the respondents through Bond, Schoeneck and King, its attorneys, respectfully shows [fol. 6] to this Court and alleges as follows:

1. That the petitioner is a corporation organized and existing under and by virtue of the Laws of the State of New York.

2. That the respondents Carroll E. Mealey, John P. Hennessy and Joseph M. Mesnig, form the State Tax Commission of the State of New York.

3. That the petitioner is engaged in business as a common carrier by omnibus and as such is subject to the supervision of the Public Service Commission of the State of New York and that your petitioner operates its said omnibuses both within and without the State of New York.

4. That on June 21, 1940, the respondents notified the petitioner that petitioner was liable for additional taxes pursuant to Section 186-a of the Tax Law. Upon information and belief said additional taxes were assessed upon gross income of the petitioner from sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania.

5. That your petitioner thereafter duly filed with the respondents an application for a hearing pursuant to the provisions of Section 186-a of the Tax Law and the respondents thereafter held such a hearing.

6. That at such hearing your petitioner established by competent proof that said additional tax for the month of [fol. 7] July, 1937, was based upon sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania and that the revenue from such services for the month of July attributable to the mileage consumed in the State of New York was 57.47% of the total revenue received for such services.

7. That regardless of such evidence the respondents refused to cancel or reduce said assessment but affirmed the same by its decision dated January 27, 1943, a copy of which is annexed hereto.

8. That said determination of the commission made January 27, 1943, is contrary to statute, is unconstitutional, and is illegal and erroneous in that any assessment upon income of the petitioner from the sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania

is illegal and void and is not authorized by statute, and said assessment is further illegal and void in that if any portion of said income is subject to tax under Section 186-a of the Tax Law the income from services consumed and used within New Jersey and Pennsylvania must be eliminated therefrom and that the income from such services consumed and used without the State of New York constitutes 42.53% of such income for the month of July, 1937.

[fol. 8] 9. That no previous application for the relief herein asked for has been made.

Wherefore, your petitioner prays that this Court review and annul said determination made by the respondents, that it direct said respondents to cancel said assessment in its entirety or in the alternative reduce the sum by 42.53% and your petitioner further prays that it may have such other, further, and different relief as to the Court may seem just and proper.

Central Greyhound Lines, Inc., of New York, by  
Robert B. Phillips.

Dated: Syracuse, New York, February 16, 1943.

*Duly sworn to by Robert B. Phillips. Jurat omitted in printing.*

[fol. 9] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

{Title omitted}

AFFIDAVIT OF LYLE W. HORNBECK IN SUPPORT OF MOTION—  
February 16, 1943

STATE OF NEW YORK,  
County of Onondaga,  
City of Syracuse, ss.:

LYLE W. HORNBECK, being duly sworn, deposes and says that he is an attorney at law associated with the firm of [fol. 10] Bond, Schoeneck & King, attorneys for the petitioner in this proceeding; that petitioner is applying for the relief provided by Article 78 of the Civil Practice Act in order to have reviewed a determination of the State Tax Commission denying petitioner's application to cancel or reduce an additional assessment made against petitioner



for taxes under the provisions of Section 186-a of the Tax Law.

The determination to be reviewed herein was made as a result of a hearing held and at which evidence was taken; upon information and belief, there will be raised herein the issues stated in Subdivisions 6 and 7 of Section 1296 of the Civil Practice Act. Therefore, deponent believes that it is proper for this Court at a Special Term to make an order directing that the proceedings herein be transferred for disposition to a term of the Appellate Division for the Third Judicial Department.

That no previous application for the relief asked for in said petition has been made.

Lyle W. Hornbeck.

Subscribed and sworn to before me this 16th day of February, 1943.

Edward Johnson, Notary Public.

[fol. 11] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

#### ANSWER AND RETURN

The respondents above named, as and for their Answer and Return herein:

1. Deny the allegations contained — the paragraph of said petition numbered 4 except that they admit that on June 21, 1940, the respondents notified the petitioner that petitioner was liable for additional taxes pursuant to Section 186-a of the Tax Law.

2. Deny that the transportation mentioned in the paragraph of said petition numbered 6 constituted interstate commerce, and deny that the services therein mentioned were partly consumed or used in the States of New Jersey or Pennsylvania.

3. Deny the allegations contained in the paragraph of said petition numbered 8.

4. Allege that the tax described in said petition and affirmed by the Commission's final determination therein [fol. 12] mentioned was lawfully assessed against the petitioner under and pursuant to the provisions of Section 186-a of the Tax Law.

7

5. Respondents certify that the annexed transcript contains a full and correct record of all of their proceedings subject to review or consideration in this proceeding.

### Transcript of Record

1. Tax return of the petitioner under Section 186-a of the Tax Law for the month of July 1937, filed with the State Tax Commission on September 16, 1937.

2. Letter from Edward Schoeneck, Esq. to Department of Taxation and Finance, dated January 8, 1940.

3. Statement of revenue originating and terminating in New York State but passing through Pennsylvania and/or New Jersey en route, received by the State Tax Commission on January 10, 1940.

4. Statement of account for an added assessment against the petitioner under Section 186-a of the Tax Law for the month of July 1937, forwarded by the State Tax Commission to the petitioner on June 21, 1940.

5. Petition for hearing filed by the petitioner with the State Tax Commission on July 8, 1940.

6. Transcript of proceedings had and testimony taken at a formal hearing held at the office of Department of Taxation and Finance, City of Albany, N. Y. on October 20, 1942, upon said application for a hearing.

[fol. 13] 7. Table entitled "Receipts from Interstate Business which Originates and Terminates in New York State," being Exhibit A upon said hearing.

8. Final determination of the State Tax Commission upon said application for hearing dated January 27, 1943, and on that date forwarded by the State Tax Commission to the petitioner.

Wherefore, Respondents pray that an order may be made directing that all proceedings herein be transferred for disposition to the Appellate Division of the Supreme Court in and for the Third Judicial Department.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Respondents, Office and Post Office Address; The Capitol, Albany, N. Y.

*Duly sworn to by Joseph M. Mesnig. Jurat omitted in printing.*

[fol. 14]

## EXHIBIT 1

Page 1 of Return

Form 10 C. T.

10 C. T. 6-23-37-10,000 (3-9278)

Receipt Stamp

File No.

Taxpayer's Bracket

Check

Amount of remittance by Money Order \$1,472.45  
Bank Draft

Place X opposite form of remittance

This Space for Name and Address

5-19-25 NY

File this return not later than the 25th of the month following that for which the report is made.

Central Greyhound Lines, Inc. of N. Y., 701 Hiawatha Blvd., Syracuse, N. Y.

Make checks payable to the State Tax Commission.

[fol. 15]

## EXHIBIT 1

STATE OF NEW YORK, DEPARTMENT OF TAXATION AND FINANCE  
ALBANY, N. Y.

Return by Utilities of tax on gross income, Article 9 Section 186-A of the Tax Law.

Utilities doing business in this State which are subject to the supervision of the State Department of Public Service.

Month of July, 1937.

- 
- A. State kind and class of business Bus transportation
  - B. State whether taxpayer is a corporation, co-partnership, individual, etc. Corporation.
  - C. If corporation, give date and place of incorporation, May 19, 1925.
  - D. If business was begun or discontinued since July 1, 1937, state which and give data

E. Are the books kept on a cash or an accrual basis?  
Accrual basis.

F. The books of the taxpayer are in care of R. B. Phillips,  
Comptroller, 701 Hiawatha Boulevard, Syracuse, New  
York.

### TAX COMPUTATION

42. Gross income taxable—forward	\$73,622.67
50. Tax at 2% of item 42	1,472.45
51. Penalty	
52. Total Tax and Penalty	1,472.45

[101. 16]

### SCHEDULE D

Detail of Lines 10, 14 and 21

Other Sales or Services; Other Miscellaneous Revenue;  
All Other Income

Description	Amount
Income from Parcel Checking, Miscellaneous Station Privileges and Services Rendered	5,756.72
Rental from Equipment	972.99
Sub-lease Rental Income	350.00
Guaranteed Route Revenue	1,717.05
Purchase Discounts and Miscellaneous	469.34
	3,509.38

### Page 2 of Return

### GROSS INCOME

Sales and Service Op

Sales and Service Operating Revenue

1. Gas
2. Electricity
3. Steam
4. Water
5. Refrigeration
6. Telephone and Telephony
7. Telegraph and Telegraphy



10

8. Railroads (street surface, rapid transit, sub-way and elevated)

9. Omnibus

474,958.35

10. Other sales or services (specify in Schedule D)

## Miscellaneous Revenue

11. Commission

11,801.83

[fol. 17]

12. Merchandise and jobbing, including installment and conditional sales and rental contracts

13. Advertising

14. Other Miscellaneous Revenue, including sales of residuals and by-products (specify in Schedule D)

5,756.72

## Other Income

15. Interest

64.35

16. Dividends

17. Royalties

18. Profit from sales of securities

19. Profit from sales of real property

20. Profit from sales of personal property

21. All other, including profits on sales, services, rents, etc. not reported above (specify in Schedule D)

3,509.38

22. Total Gross Income

496,090.63

## DEDUCTIONS OF NON-TAXABLE INCOME

## Sales and Service Operating Revenue

30. From sources without State—Schedule E

31. From other distributors within the State—Schedule F

404,471.81

32. From customer resales—Schedule G

## Miscellaneous Revenue—Schedule H

33. From sources without the State

14,952.78

34. From others who purpose to resell

[fol. 18].

## Other Income—Schedule I

35. Interest from U. S., State and other tax exempt securities	
36. Interest from sources without the State	54.80
**37. Interest from affiliated companies	
38. Dividends from sources without the State	
**39. Dividends from affiliated companies	
40. Other permissible income deductions	2,988.57
41. Total deductions	422,467.96
42. Gross income taxable	73,622.67

\*\* Only where a majority of voting stock is owned by taxpayer reporting.

## Page 3 of Return

DETAIL OF DEDUCTIONS SHOWN ON LINES  
30 to 40 INC.

## Sales and Service Operating Revenue

Schedule E—Line 30  
Sources Without the State

Name of Purchaser	Address	Place of Delivery	Amount
Operating Revenue Earned in	Interstate Commerce	and without the State	404,471.81

[fol. 19]

Schedule F—Line 31  
Other Distributors

Name of Purchaser	Address	K. W. H. or Other Quantity Delivered	Amount
-------------------	---------	---	--------

**Schedule G—Line 32  
Customer Resales**

	Month <b>K. W. H.</b> or Other	
<b>Name of Purchaser</b>	<b>Address of</b>	<b>Quantity Resold Amount</b>

**MISCELLANEOUS REVENUE  
Schedule H—Lines 33 and 34**

Description	Amount
Commissions and Station Income from locations without the State	14,952.78

[fol. 20]

**OTHER INCOME  
Schedule I—Lines 35 to 40**

Nature of Income (Interest, dividends etc.)	Name of Payer	Proportion of Voting Stock Owned	Amount
Miscellaneous Interest Earned Outside the State			54.80
Portion of Miscellaneous Income that was earned outside the state			2,988.57

STATE OF NEW YORK,  
County of Onandaga, ss:

F. W. Golke, Ass't Treasurer (If Corporation, give title of Office) of Central Greyhound Line, Inc. of New York (Name of firm, association or corporation) being duly sworn deposes and says that this return is to the best of his

knowledge and belief true and correct in every particular and that he is familiar with the details of the business herein covered and with the original books, papers and records from which this return was prepared.

F. W. Celke (Signature of affiant).

Sworn before me this 13th day of September, 1937.

Ethel M. Burnham (Signature of officer administering oath), Notary Public (Title). (Seal.)

[fol. 21]

EXHIBIT 2

BOND, SCHOENECK & KING  
1400 State Tower Building  
Syracuse, N. Y.

January 8, 1940.

Department of Taxation and Finance  
Corporation Tax Bureau  
Albany, New York

Re: Central Greyhound Lines, Inc. of New  
York

Your File No. 610104—Mr. Kent

Gentlemen:

We enclose a statement showing revenue of Central Greyhound Lines, Inc. of New York, originating and terminating in New York but passing through Pennsylvania and/or New Jersey, enroute. This information is furnished to you pursuant to your demand and under protest. It is in no way to be considered a concession or admission that such receipts or any part thereof are taxable under the provisions of Section 186a of the Tax Law.

We call your attention to the fact that this revenue is not allocated to show that portion of the gross receipts applicable to the mileage within the State of New York.

Very truly yours,

(S.) Edward Schoeneck.

LWH:EFS  
enc.



**CENTRAL GREYHOUND LINES, INC. OF NEW YORK**  
**REVENUE ORIGINATING AND TERMINATING IN**  
**NEW YORK STATE BUT PASSING THROUGH**  
**PENNSYLVANIA AND/OR NEW JERSEY**  
**ENROUTE**

July — 1937	\$ 84,412.31
Aug.     "	88,910.45
Sept.    "	69,838.81
Oct.     "	44,129.26
Nov.     "	33,358.83
Dec.     "	32,312.99

Total	\$ 352,962.65
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Jan. — 1938	\$ 26,881.84
Feb.     "	23,179.53
Mar.     "	26,021.64
Apr.     "	44,084.23
May     "	46,199.49
June     "	54,933.63
July     "	93,949.17
Aug.     "	110,835.21
Sept.    "	93,432.59
Oct.     "	57,327.27
Nov.     "	51,793.01
Dec.     "	49,442.51

Total	\$ 678,080.12
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[fol. 23]

Jan. — 1939	\$ 38,444.36
Feb. "	32,276.55
Mar. "	38,543.63
Apr. "	58,331.34
May "	66,185.17
June "	84,878.72
July "	130,092.53
Aug. "	138,071.94
Sept. "	104,914.79
Oct. "	65,180.08
Nov. "	42,942.55

Total \$ 799,861.66

GRAND TOTAL \$1,830,904.43

#### EXHIBIT 4

### DEPARTMENT OF TAXATION AND FINANCE, ALBANY, N. Y.

27-CT.

#### CORPORATION TAX BUREAU.

#### Notice of Assessment and Receipt 186-A Additional Tax on Utilities

Notice is hereby given that there has been assessed against you the amount set forth below as an additional tax under Section 186-A of the Tax Law, based on the period shown below measured by gross income or gross operating [fol. 24] income at the rate of 2%. Any balance due is payable at once. Certified checks should be made payable to and forwarded to State Tax Commission, Albany, N. Y., with this form if there is a balance due. If no balance due this constitutes a receipt. No charges are considered paid until check is satisfied.

Tax Item Description		Amount
Report July 1937		1688.24
Added Assessment		
Less Payment Accompanying Report		
File Number	Date of Assessment	
610104	Refer To 6 21-40	Balance Due 1688.24
		Received Payment

Central Greyhound Lines Inc of 610104  
 N. Y.  
 701 Hiawatha Blvd.  
 Syracuse, N. Y.

[fol. 25]

# EXHIBIT 5

## PETITION

State of New York—Department of Taxation and Finance

In the Matter of The Application of CENTRAL GREYHOUND LINES INC. OF NEW YORK, for a Hearing Pursuant to Section 186-a-6 of the Tax Law

The petition of Central Greyhound Lines Inc. of New York respectfully shows:

1. That it is an omnibus corporation duly organized under the laws of the State of New York, having its principal office at Syracuse, New York and engaged in the operation of omnibus lines both within and without the State of New York.

2. That on June 21, 1940 the Department of Taxation and Finance notified the petitioner that it was liable for additional taxes in the sum of Thirty-six Thousand Six Hundred Eighteen Dollars (\$36,618.00) pursuant to Section 186-a of the Tax Law. That copies of such notices are annexed hereto.

3. Upon information and belief, said additional taxes are assessed upon gross income of the petitioner from sales

of transportation services in interstate commerce originating and terminating within the State of New York, but consumed and used partly within the States of New [fol. 26] Jersey and Pennsylvania. Any assessment upon such income is not authorized by statute and is illegal and void; said assessment includes taxes which cannot be lawfully demanded or collected.

4. Said assessment is further illegal and void in that if any portion of said income is subject to taxation under Section 186-a of the Tax Law, the income from services consumed and used within the States of New Jersey and Pennsylvania must be eliminated therefrom and that the income from such services consumed and used without the State of New York constitutes over 50% of such income.

Wherefore, the petitioner respectfully asks for a hearing before the Tax Commission, pursuant to the provisions of Section 186-a-6 of the Tax Law, and that the Tax Commission cancel or reduce such illegal assessment.

Central Greyhound Lines Inc. of New York, by Fred W. Celke.

STATE OF NEW YORK,  
County of Onondago,  
City of Syracuse, ss:

Fred W. Celke, being duly sworn, deposes and says: That he is Asst. Treas. of Central Greyhound Lines, Inc. of New York, the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Fred W. Celke.

Subscribed and sworn to before me this 6th day of July, 1940. Howard H. Cannon, Notary Public.

"Annexed to the original petition are copies of the notices referred to in paragraph 2 of the foregoing exhibit covering the period from July 1, 1937 through November 30, 1939. The notice for the month of July, 1937, is printed above as Exhibit 4. The other notices are upon the same form but cover different dates and amounts."



State of New York—Department of Taxation and Finance

In the Matter of the Application of CENTRAL GREYHOUND LINES, INC., OF NEW YORK, for revision of Taxes assessed under Section 186-A of Article 9 of the Tax Law

Formal Hearing held at the office of the Department of Taxation and Finance, Corporation Tax Bureau, Albany, N. Y., on the 20th day of October, 1942.

Present for State Tax Commission—Joseph M. Mesnig, Tax Commissioner. E. W. Burton, Deputy Director, Corporation Tax Bureau. Harry C. Moody, Corporation Tax Administrative Supervisor, Corporation Tax Bureau. Chester A. Kent, Tax Examiner, Corporation Tax Bureau.

APPEARANCES:

For Central Greyhound Lines, Inc. of New York—Edward Schoeneck, Lyle W. Hornbeck, of Counsel, Bond, Schoeneck & King, 1400 State Tower Building, Syracuse, N. Y.

[fol. 28] Robert B. Phillips, Comptroller.

Com. Mesnig: I understand the issues are first, whether Section 186-A is intended to apply to a tax on the sales of bus transportation by this corporation from points originating in and terminating in the State of New York but traversing outside the State during some portion of the journey, and second, if it does, whether or not the receipts should be prorated according to the mileage in and out of the State.

Mr. Hornbeck: Correct.

Com. Mesnig: It is stipulated that your proof will relate to your operations for the month of July, 1937, but that the judicial result will be applied to all the assessments to date, for which applications for revision have been filed.

Mr. Hornbeck: Correct.

MR. ROBERT B. PHILLIPS, duly sworn by Commission-Mesnig, testified as follows:

By Mr. Hornbeck:

Q. Mr. Phillips, your full name is Robert B. Phillips?

A. That is correct.

Q. You live in Syracuse, N. Y.?

A. I do.

Q. What is your connection with Central Greyhound Lines, Inc. of New York?

A. I am the Comptroller.

Q. And your office is located at Syracuse, N. Y.?

A. That is correct.

[fol. 30] Q. And as comptroller do you have charge of all of the records of this corporation?

A. I do.

Q. Showing the revenues received and the type of services that produced that revenue?

A. Yes, sir, I do.

Q. What is the basic record that you keep?

A. The basic record, of course, is the ticket itself that is sold by the agent. The ticket is sold in accordance with tariffs published and filed with the New York State Public Service Commission and the Interstate Commerce Commission. The tickets are lifted from the passenger by the drivers on the various trips. The drivers list the tickets on the trip report. The trip report shows the bus number, the driver's name, the miles operated, the origin and destination of the ticket, and the portion of the haul or route that the ticket holder makes on the particular trip. As an example, a ticket might be sold from Buffalo, N. Y., to Miami, Florida. The particular trip under our jurisdiction would be from Buffalo, N. Y., to New York City only, where the passenger would change onto another bus line. Our trip report would have recorded upon it by the driver or the various drivers along the route that portion of the haul between Buffalo and New York City.

Q. These trip reports are then collected and information is drawn from them on your records?

A. We draw all types of statistical and financial information from them. We compute the dollars and cents value of the total ride of any one passenger over our routes. We set forth the mileage that this particular pas-

[fol. 31] senger has traveled, and on the trip report we set

forth the mileage the passenger might have traveled wholly intrastate business within the State of New York, purely local business. We also set forth on the trip report the mileage that the passenger might have traveled of wholly intrastate business in any other state through which we operate, such as Pennsylvania or Ohio. Due to this—what shall I call it—indefiniteness in regard to searching 186-A of the New York Tax Law, we have also provided space and means on our trip report to set forth the haul or ride of a passenger that originates and terminates in New York State but passes through other states en route. Then also from information on the trip report we code and compute mileage traveled by passengers in wholly interstate rides, that is, rides that originate in New York State and terminate outside the State, or vice versa.

Q. At the end of a particular month you take these trip reports and you prepare statements showing the total amount of interstate revenue received for that particular month. Is that correct?

A. Well, we don't set the interstate revenue out as such.

Q. You, show, first, the total amount of intrastate revenue.

A. We show, first, the total amount of revenue of all sources and descriptions. We segregate that into intrastate revenue in New York State, intrastate revenue in other states, and interstate revenue under consideration under Section 186-A which originates and terminates in New [fol. 32] York State although passing through other states en route. The total of those three different types of revenue I have just named—intrastate in New York State, intrastate in other states, and interstate under consideration under Section 186-A—is subtracted from the total revenue, and through that means we arrive at the interstate revenue originating in New York State but terminating outside New York State or vice versa. Now, our trip reports do contain the data, the statistics, and the information from which we can pull together that last type of intrastate revenue, if we desired, but we don't need it for any particular purpose, so we have never drawn it together. We figure through this method of deductions we are arriving at the figure which will be just as accurate as though we had gone through all the extreme detail of tying it together through individual tickets.

Q. Have you prepared for the month of July, 1937, a statement showing the total amount of revenue from inter-

state business which originates and terminates in New York State?

A. I have—under my supervision.

Q. May this be marked for identification?

Com. Mesnig: Received for identification and marked Exhibit "A".

(Statement—4 pages—headed "Central Greyhound Lines, Inc. of New York—Receipts from Interstate Business Which Originates and Terminates in New [fol. 33] York State—Month of July, 1937" received for identification and marked Exhibit "A")

Q. And is Exhibit "A", marked for identification, such a statement as you have just described?

A. It is; yes, sir.

Q. And is this taken from the original records of the corporation which you have described?

A. It has been; yes, sir.

Q. And those records are kept in the ordinary course of business?

A. Yes, sir. They are on file in the Syracuse office of the corporation.

Q. Now, will you tell us what Exhibit "A" shows?

A. Exhibit "A" shows a résumé of the detail of tickets lifted by our drivers and recorded on our trip reports, these tickets having originated and terminated in New York State but have passed en route through other states. On pages 1, 2, and the upper half of 3 we show the city of origin or destination of traffic between the cities named and New York City, or between New York City and the cities named. This data as compiled shows the traffic in either direction. For instance, from Buffalo to New York City, or from New York City of Buffalo. The total business in the month of July, 1937, in both directions of this nature under consideration under 186-A is included in this figure of \$19,479.85. The figures in the second column, which is marked "(1) To New York City", show the miles between the city or village in the left hand column to New York City or from New York City to the city or village. The figure in the third column, that marked "(2)" at [fol. 34] the top and headed "Within New York State," shows the mileage wholly within New York State on this particular trip. The figure in the fourth column, headed



"Per cent of (2) to (1)" shows the percentage of the miles wholly within New York State to the total miles between New York City and the origin or destination in the left hand columns. Under the two columns headed "Interstate Revenue", the left hand column, the first column, is headed "Total" and in this column is shown the total revenue from interstate commerce under consideration under Section 186-A here between the point or city or village indicated in the left hand column and New York City, or vice versa. The last column on the right hand side of the page, headed "Within New York State" indicates or shows a figure arrived at by applying the percentage figure in the fourth column to the total figure in the fifth column. On the bottom part of page 3 of the Exhibit we have origins and destinations shown; as an example, Pt. Allegany to E. Aurora, and from that point down. Those figures in the various columns opposite these origins and destinations on the bottom part of page 3 and on page 4 reflect the same information as I have just indicated for the destinations on pages 1, 2 and the bottom half of page 3. Now, Pt. Allegany is outside of New York State. In fact, it is in Pennsylvania. East Aurora is in New York State. All of the cities in the left hand column on page 3 are outside of New York State. In fact, both Scranton and Pt. Allegany are in Pennsylvania, but the destinations are in New [fol. 35] York State. We have shown these origins and destinations due to the fact that a ticket might be sold to a passenger from New York City or East Aurora. That passenger no doubt took our New York-Cleveland, Ohio, trip, and had to change buses at Pt. Allegany. The ticket as sold out of New York City was probably sold in two tears; that is, one tear reading "From New York City to Pt. Allegany", and the other tear reading "From Pt. Allegany to East Aurora". Now that original tear, from New York City to Pt. Allegany, would be listed by the driver on our New York City-Cleveland bus, whereas the tear from Pt. Allegany to East Aurora would be listed by another driver, and the information in connection with the complete haul would therefore be recorded on two separate trip reports, so in order to get that complete haul into our picture I show the information as recorded.

Com. Mesnig: Where do you get the haul from New York City to Pt. Allegany, then, or where do you show that?

A. You mean the portion of the haul?

Com. Mesnig: From New York City to Pt. Allegany.

A. That would be down here (indicating).

Com. Mesnig: I see it. Pt. Allegany is one of the cities or villages listed on page 1.

A. That is right. There is a 5.6 miles haul from the Tunnel of New York to the bus terminal in New York City recorded there under the second column opposite Pt. Allegany on page 1. That would account for the balance of that [fol. 36] haul. The total figure shown in the fifth column under interstate revenue on page 4, \$84,412.31, reflects the total interstate to revenue for the month of July, 1937, originating and terminating in New York State but passing en route through other states. The amount of \$48,508.97 reflects a total of the portion of that revenue whose ride was wholly within New York State.

Mr. Burton: That is computed on the basis of exact mileage traveled in New York State on those particular trips.

A. As compared to the total miles on the particular trip; yes, sir.

Mr. Hornbeck: We have no other proof on this question.

Com. Mesnig: Do you want to offer this in evidence?

Mr. Hornbeck: I offer it in evidence; yes.

(Statement, which was received for identification and marked Exhibit "A", placed in evidence.)

By Com. Mesnig: Mr. Phillips continuing to testify.

Q. Mr. Phillips, the Central Greyhound Lines, Inc., of New York, is a corporation subject to the jurisdiction of the Public Service Commission?

A. Yes, sir.

Q. Now, as to the preparation of Exhibit "A", I understand that is not made from an actual examination of all the tickets sold during the month of July, 1937.

A. Yes, sir, it is made from an examination of all tickets [fol. 37] sold whose ride originates and terminates within New York State but passes en route through other states. It has taken into consideration every individual ticket for the month of July.

Q. I understand your explanation, then. I thought you said that it was made by taking the figures showing total

interstate receipts and subtracting total intrastate receipts to show this difference.

A. No. This figure is computed by taking each individual ticket that is sold whose origin and destination are within New York State, but whose ride passes through another state en route. This other figure of interstate business, with which I think you are a little confused, is the interstate business originating in New York State but terminating outside of the State. That latter interstate business is arrived at through taking our total revenue for all tickets and deducting from that our intrastate revenue in the various states and this type of interstate revenue under consideration under Section 186-A.

Mr. Burton: Was none of that type of straight interstate business included in this Exhibit?

A. No, sir. As an example: In our tax reports under this section there is under Schedule E a figure which shows the operating revenue earned in interstate commerce and outside the State of New York. Now, that interstate revenue includes the type of revenue under consideration under 186-A.

(Discussion off the record.)

[fol. 38] Q. Referring to page 1 of Exhibit "A", - Mr. Phillips, what would be the route that the bus would follow in proceeding from Buffalo to New York City.

A. This particular route runs from Buffalo to Batavia, to Mt. Morris, Dansville, Hornell, Elmira, then to Tonawanda, Pa., then into Scranton and through New Jersey to the Tunnel and into New York City.

Q. Is that a through ride; that is, one bus makes that trip?

A. Yes, sir. One bus makes the trip.

Q. And a passenger desiring to make that trip would buy a ticket in Buffalo marked "Buffalo to New York City"?

A. That is correct.

Q. And the gross receipts from those trips during the month of July, 1937, represents the \$19,479.85, shown on Exhibit "A"?

A. Yes; in both directions.

Q. All of your entrances and exits from New York City are through New Jersey by way of the Holland Tunnel?

A. Yes, sir; they are. Well some of them are now through the Lincoln Tunnel, but through New Jersey and through the Lincoln or Holland Tunnel.

Q. And that accounts for the large number of cities which in this Exhibit are related to trips to New York City?

A. Yes, sir.

Q. And in all cases a ticket is sold from the particular city that may be shown in the left hand column of Exhibit "A" to New York?

A. Or vice versa. Yes, sir.

Q. Or vice versa.

[fol. 39] Mr. Kent: Where you have a Pennsylvania and New Jersey city here, that is where there is a stop-over?

A. Yes, sir.

Mr. Kent: From a New York City point to a New York State point up-state?

A. That is correct.

Mr. Kent: In other words, those are all through trips.

A. Yes, sir. For instance, if we sold a ticket from Jersey City, N. J., into New York City, it would not be reflected in this report. The only reason Jersey City is reflected here is because a ticket was sold at some New York State point, and the passenger stopped over in Jersey City and took another one of our busses on into New York City, and the two portions of the ride were recorded on two different trip reports.

Q. But the transportation was all sold on a single ticket?

A. That is correct, although the ticket might have been in more than one tear. By a tear I mean a portion of a ticket. For example, if the passenger originated, let us say, in Binghamton, N. Y., destined to New York City, we could have sold that passenger a ticket in one tear, one piece, reading Binghamton to New York City. The passenger could decide when he got to Jersey City, due to sickness or any other reason, that he wanted to stop off, in which instance the driver would punch his ticket and make a notation showing he had ridden from Binghamton to Jersey City. The ticket would be returned to the passenger [fol. 40] and the driver would record these facts on his trip record. The next day the passenger might decide to go on into New York City, so he would use the same ticket



and complete his ride. Now, there is another situation under which the passenger might be issued a two tear ticket in order to simplify his ride and the accounting. If a passenger knew when he left Binghamton that he wanted to stop over in Jersey City, we would issue a ticket in two tears, one reading, "Binghamton to New York City", which the first driver would lift, and the other reading, "Jersey City to New York City," which the second driver would lift, but in each instance the bookkeeping is the same.

Q. At the end of the compilation on page four, Mr. Phillips, there appears, "(a) Receipts from interstate business on trips into New York City, \$506.73"; and there follows similar receipts designated, " . . . not into New York City", and, finally, " . . . outside New York State". What do those refer to?

A. The first caption "(a) Receipts from interstate business on trips into New York City, \$506.73", all of which has been considered business within New York State, that might result from a passenger originating in Syracuse whose destination was New York City. He might have decided to lay over in Binghamton. You see the Syracuse to Binghamton portion of his ride was wholly in New York State; therefore, all the proceeds from it were shown as wholly within New York State. Now, the receipts from [fol: 41] interstate business on trips not into New York City—we decided that it was much too much detail for us to go through each trip report where there was a layover and try to match it up with the final destination of a passenger whose destination was not within the State of New York or, in this instance, not within New York City. The passenger might have held a ticket reading "Syracuse to Philadelphia." He might have decided to lay over in Binghamton, N. Y. The haul from Syracuse to Binghamton would be a haul within New York State, although he is riding on an interstate ticket whose destination is Philadelphia. Theoretically and technically no portion of that haul would be subject to the tax under 186-A. However, in order to eliminate extreme detail recordings of all tickets, we permit the drivers to group tickets reading from a certain origin to a certain destination. For instance, of this day a driver might have had 10 tickets reading "Syracuse-Binghamton". Now of those 10 tickets there might have been a stub or a tear of a Syracuse-Philadelphia ticket included. Rather than examine all of our trip reports of later

dates to determine when that passenger went on and whether or not it was a ticket whose destination was outside New York State, we just state that passenger's haul from Syracuse to Binghamton was wholly within New York State, so we set it down here as such and don't try to break it up. It was an attempt on our part to save a lot of matching. You see the passenger might have bought a two tear ticket [fol. 42] out of Syracuse to Philadelphia and used the Syracuse-Binghamton portion of it today, and he might use the Binghamton-Philadelphia portion of it sixty days from now. We just did not want to go through all the work of doing the matching.

Mr. Burton: That figure would include the gross receipts for the full amount of the ticket—

A. It would be the amount from Syracuse to Binghamton only in this case.

Mr. Kent: Why is not that reported as subject to tax under Section 186-A?

A. Because it was an interstate ticket whose destination with Philadelphia, in this instance.

Q. How could you determine that, Mr. Phillips, unless you did match it up with the remainder of the ticket among all the tickets received?

A. The ticket stub itself tells that, you see. If it was a two tear ticket, the original stub would say "Syracuse to Philadelphia"—origin, Syracuse, destination Philadelphia—but this ride, Syracuse to Binghamton.

Q. Then that portion of the ticket that is picked up on the trip from Syracuse to Binghamton would reveal that it was originally a Philadelphia through ticket?

A. That is right, but in order to eliminate a lot of decoding and bookkeeping, which would take more time than it was worth, we decided where tickets were grouped on a driver's report and explanation made we would let that explanation stand rather than break it up—

[fol. 43] Q. I suppose it would be unusual but conceivable that a passenger might buy a ticket at Philadelphia and then abandon his trip at Binghamton?

A. If he did, he would ask for a refund, and if he did we could make it in that instance, because we have a local franchise between Syracuse and Binghamton, and if he did that we would have to include that portion of his haul

from Syracuse to Binghamton in the subsequent tax return under 186-A, because that constitutes a wholly local ride, and it would become local after we refunded the interstate portion of it from Binghamton to Philadelphia.

Mr. Burton: Have you included in any of your returns receipts of that nature?

A. Well, I don't know. They would be so very very infrequent that none have ever come to my direct attention. I am not sure that the occasion has ever happened. I am just citing what might happen.

Mr. Burton: Is your accounting so set up that you would include it if that happened?

A. Oh, yes. The accounting would permit us to do it, but whether or not we have ever had an instance of a refund like that I don't know.

Q. Well, in general, Exhibit "A" then shows the total results for the month of July, 1937, on all tickets sold from points within New York to points within New York but with intervening travel outside the State?

A. Yes, sir.

Q. And the proportion of mileage within and without New York?

A. Yes, sir.

[fol. 44] Q. It is understood that this hearing is limited to proof with respect to the month of July, 1937, that all subsequent applications for revision will be held pending the outcome of whatever litigation results as a result of this hearing, and that the pending applications will be determined according to whatever decision is reached by the courts.

Mr. Hornbeck: That is right.

[fol. 45]

## EXHIBIT 7

Central Greyhound Lines, Inc. of New York  
 Receipts from Interstate Business which Originates and  
 Terminates in New York State  
 Month of July, 1937

City	Miles		Interstate Revenue	
	(1) To New York City	(2) Within New York State	Percent of (2) to (1)	Within New York State
	Total	Total	Total	Total
Buffalo	386.2	172.7	44.72	\$19,479.85
Batavia	347.4	133.9	38.54	437.11
Mt. Morris	319.8	106.3	33.24	397.52
Dansville	304.2	90.7	29.82	228.45
Hornell	297.6	84.1	28.26	578.75
Bath	273.9	60.4	22.05	355.96
Corning	253.1	39.6	15.65	714.20
Elmira	237.0	23.5	9.92	1,581.23
Waverly	219.4	5.9	2.69	260.95
Sonyea	315.9	102.4	32.42	143.19
Campbell	202.5	40.0	19.75	57.84
Elkton	335.8	122.3	36.42	9.90
Painted Post	259.8	46.3	17.82	7.30
Rochester	375.6	195.1	51.94	2,642.54
Pittsford	367.6	187.1	50.90	14.85
Honeoye Falls	370.6	190.1	51.30	4.95
Canandaigua	347.6	167.1	48.07	154.11
Geneva	330.6	150.1	45.40	200.00
Waterloo	323.6	143.1	44.23	15.92
Seneca Falls	319.6	139.1	43.52	47.25
Auburn	302.6	122.1	40.35	419.34
Elbridge	293.6	113.1	38.52	7.90
[fol. 46]				
Camillus	287.6	107.1	37.24	11.64
Syracuse	276.6	96.1	34.74	9,575.40
Tully	257.9	77.4	30.01	22.11
Homer	245.0	64.3	26.33	67.43
Cortland	242.1	61.0	25.44	1,963.52
Marathon	227.1	46.6	20.52	50.47
Lisle	220.1	39.6	17.99	42.26
Whitney Point	217.8	37.3	17.13	67.40
Castle Creek	209.4	28.9	13.80	30.65
Little York	249.5	69.0	27.66	3.65
Binghamton	199.3	18.8	9.43	3,612.01
Scranton	133.8	5.6	4.19	597.74
Port Allegany	315.7	5.6	1.77	36.75
Towanda	198.7	5.6	2.82	11.85
Stroudsburg	91.7	5.6	6.11	1.28
Warren	380.0	5.6	1.47	34.26
Sayre	217.1	5.6	2.58	3.40
Daleville	122.8	5.6	4.56	30.96
Delaware Water Gap	85.6	5.6	6.54	3.66
Budd Lake	51.2	5.6	10.94	73
Netcong	49.5	5.6	11.31	1.22
Hackettstown	58.4	5.6	9.59	83
Jersey City	8.8	5.6	63.64	10
Pittston	144.1	5.6	3.90	1.94
Tannersville	99.2	5.6	5.65	1.27
Mt. Pocono	106.3	5.6	5.27	2.80
Watertown	345.9	321.5	92.95	2,017.52
Lowville	317.8	293.4	92.33	184.45
Booneville	294.3	269.9	91.71	53.90



Central Greyhound Lines, Inc. of New York  
Receipts from Interstate Business which Originates and  
Terminates in New York State  
Month of July, 1937

City	Miles			Interstate Revenue	
	(1) To *New York City	(2) Within New York State	Percent of (2) to (1)	Total	Within New York State
Remsen.....	279.5	255.1	91.27	3.90	3.56
Utica.....	262.2	237.8	90.69	1,684.79	1,527.94
Ilion.....	250.0	225.6	90.24	104.83	94.60
Herkimer.....	246.7	222.3	90.11	223.05	200.99
Little Falls.....	239.4	215.0	89.81	157.12	141.11
Palatine Bridge.....	219.7	195.3	88.89	40.35	35.87
Fonda.....	207.7	183.3	88.25	249.82	220.47
Amsterdam.....	196.9	172.5	87.61	599.49	525.21
Schenectady.....	180.4	156.0	86.47	1,775.83	1,535.56
Troy.....	165.2	140.8	85.23	1,580.01	1,346.64
Albany.....	157.6	133.2	84.52	8,340.93	7,049.75
Coxsackie.....	135.3	110.9	81.97	418.40	342.96
Athens.....	129.9	105.5	81.22	32.34	26.27
Catskill.....	124.7	100.3	80.43	2,939.78	2,364.47
Cementon.....	118.4	94.0	79.39	40.33	32.02
Saugerties.....	112.9	88.5	78.39	1,125.36	882.17
Kingston.....	101.0	76.6	75.84	7,020.25	5,324.16
Port Ewen.....	98.6	74.2	75.25	161.96	121.87
Esopus.....	93.2	68.8	73.82	68.93	50.88
West Park.....	92.2	67.8	73.54	278.31	204.67
Highland.....	85.4	61.0	71.43	258.29	185.50
Milton.....	80.9	56.5	69.84	172.59	120.54
Marlboro.....	76.8	52.4	68.23	285.30	194.06
Middlehope.....	73.1	48.7	66.62	6.80	4.53
Newburg.....	68.5	44.1	64.38	620.91	399.74
Vails Gate.....	63.5	39.1	61.57	23.55	14.50
Mountainville.....	59.0	34.6	58.64	39.40	23.10
Highland Mills.....	54.5	30.1	55.23	283.13	156.37
Central Valley.....	53.4	29.0	54.31	70.25	38.15
Rosendale.....	97.4	73.0	74.95	992.22	743.67
Tillson.....	95.6	71.2	74.49	157.66	117.43
[fol. 48]					
New Paltz.....	89.5	65.1	72.74	437.01	317.88
Ireland Corners.....	83.7	59.3	70.85	124.42	88.15
Wallkill.....	77.5	53.1	68.52	131.27	89.95
Walden.....	74.0	49.6	67.03	311.86	209.06
Scotts Corners.....	71.3	46.9	65.78	44.07	28.99
Maybrook.....	68.0	43.6	64.12	38.64	24.78
Washingtonville.....	61.7	37.3	60.45	112.95	68.28
Zinderast Park.....	56.1	31.7	56.51	28.00	15.82
Monroe.....	53.9	29.5	54.73	173.35	94.87
Harriman.....	50.8	26.4	51.97	30.27	15.73
Southfields.....	45.8	21.4	46.72	251.46	117.48
Tuxedo.....	42.2	17.8	42.18	86.13	36.33
Spokaneburg.....	39.5	15.1	38.23	91.24	34.88
Ramapo.....	37.2	12.8	34.41	9.65	3.32
Suffern.....	35.7	11.3	31.65	209.84	66.41
Sharon Springs.....	219.6	195.2	88.89	766.41	681.26
Richfield Springs.....	240.2	215.8	89.84	194.64	174.86
Copenhagen.....	330.7	306.3	92.62	9.80	9.08
Turin.....	305.5	281.1	92.01	55.15	50.74
Houseville.....	309.7	285.3	92.12	8.55	7.88

Frankfort	252.5	228.1	90.34	32.25	29.13
Carlisle	209.2	184.8	88.34	13.14	11.61
Springfield Center	234.1	209.7	89.58	5.10	4.57
St. Johnsville	228.8	204.4	89.34	79.68	71.19
Cherry Valley	226.5	202.1	89.23	73.05	65.18
Watervliet	166.0	146.6	85.30	19.50	16.63
Ravena	142.9	118.5	82.93	62.46	51.80
[fol. 49]					
Malden	115.2	90.8	78.82	52.03	41.01
Burnside	65.6	41.2	62.81	1.25	.79
Killwog	224.1	43.6	19.46	6.90	1.34
Savona	267.1	53.6	20.07	3.48	.70
Newark, N. J.	14.3	5.6	39.16	.22	.09
West Camp	117.0	92.6	79.15	1.80	1.42
Sloansville	203.1	178.7	87.99	13.19	11.61
Ulster Park	95.1	70.7	74.34	49.50	36.80
Barnveld	275.6	251.2	91.15	3.80	3.46
Talcottsville	298.3	273.9	91.82	8.50	7.80
Pt. Allegany to					
E. Aurora	85.0	68.5	80.59	2.52	2.03
Arcade	63.2	46.7	73.89	1.25	.92
Machias	52.3	35.8	68.45	3.05	2.09
Delevan	57.5	41.0	71.30	7.50	5.35
Franklinville	45.6	29.1	63.82	8.79	5.61
'Olean'	25.0	8.5	34.00	35.10	11.93
Portville	19.5	3.0	15.38	.80	.12
Buffalo	103.0	86.5	83.98	15.10	12.68
Seranton to					
Binghamton	65.5	13.2	20.15	36.04	7.26
Syracuse	142.8	99.5	63.38	198.52	125.82
Elmira	103.2	17.9	17.34	42.90	7.44
Buffalo	252.4	167.1	66.20	210.39	139.28
Bath	140.1	54.8	39.11	15.54	6.08
Batavia	213.6	128.3	60.07	6.56	3.94
Mt. Morris	186.0	100.7	54.14	18.76	10.16
Tully	124.1	71.8	57.86	1.65	.95
Rochester	241.8	189.5	78.37	32.49	25.46
Hornell	163.8	78.5	47.92	21.28	10.20
Cortland	108.3	56.0	51.71	13.23	6.84
[fol. 50]					
Auburn	168.8	116.5	69.02	6.17	4.26
Corning	119.3	34.0	28.50	22.01	6.27
Lisle	86.3	34.0	39.40	1.25	.49
Canandaigua	213.8	161.5	75.54	3.12	2.36
Waverly	85.6	3	35	5.05	.02
Sonyea	182.1	96.8	53.16	5.30	2.82
Buffalo to					
W. Pittston	249.0	167.1	67.11	8.56	5.74
Stroudsburg	294.5	167.1	56.74	12.51	7.10
Towanda	187.5	167.1	89.12	16.08	14.33
Hackettstown	327.8	167.1	50.98	4.92	2.51
Jersey City	377.4	167.1	44.28	5.18	2.29
Binghamton to					
Jersey City	191.0	13.2	6.91	2.57	.18
Daleville to					
Syracuse	153.8	90.5	58.84	6.84	4.02
Cortland	119.3	56.0	46.94	11.65	5.47
Homer	122.2	69.9	57.20	8.52	4.87
Newark to					
Syracuse	262.3	90.5	34.50	3.26	1.12
Elmira	222.7	17.9	8.04	2.90	.23
Rochester	361.3	189.5	52.45	12.90	6.77
Rochester to					
Paterson	358.6	189.5	52.84	3.49	1.84
Hackettstown	317.2	189.5	59.74	3.77	2.25
Mt. Pocono	219.3	189.5	70.37	7.10	5.00

[fol. 45]

## EXHIBIT 7

**Central Greyhound Lines, Inc. New York**  
**Receipts from Interstate Business which Originates and**  
**Terminates in New York State**  
**Month of July, 1937**

City	(1) To New York City	Miles (2) Within New York State	Percent of (2) to (1)	Interstate Total	Revenue Within New York State
Syracuse to Jersey City.....	268.3	90.5	33.73	3.58	1.21
Montclair.....	256.2	90.5	35.32	3.18	1.12
[fol. 51] Tobyhanna.....	164.9	90.5	54.88	2.46	1.35
Mt. Morris to Laceyville.....	142.8	100.7	70.03	1.15	.81
Tunkhannock.....	160.6	100.7	62.70	2.22	1.39
Cortland to Delaware Water Gap.....	156.5	56.0	35.78	2.03	.73
Hornell to Caldwell.....	273.1	78.5	28.74	3.86	1.10
Campbell to Pittston.....	125.8	43.4	34.50	1.99	.69
(a) Receipts from interstate business on trips into New York City.....				506.73	306.73
(b) Receipts from interstate business on trips not into New York City.....				3,252.44	3,252.44
(c) Receipts from interstate business on trips outside New York State.....				331.18	-0-
<b>TOTAL</b> .....				<b>\$84,412.31</b>	<b>\$48,508.97</b>
<b>Percent</b> .....				<b>100.00</b>	<b>57.47</b>

[fol. 52] Miles into New York City with the exception of those indicated otherwise.

These points are shown because of layover or transfer.

(a) Receipts from interstate business on trips into New York City which, due to layover in New York State, is all credited within New York State.

(b) Receipts from interstate business on local trips in New York State which carried a portion of business originated and terminating in New York State.

(c) Receipts from interstate business which originated and terminated in New York State but recorded on trips outside New York State due to layover or transfer.

[fol. 53]

## EXHIBIT 8

## State of New York

## Department of Taxation and Finance

## Corporation Tax Bureau

Albany, N. Y.,  
January 27, 1943.

In the Matter of the Application of CENTRAL GREYHOUND LINES, INC., OF NEW YORK, for Revision of Additional Tax under Section 186-a of Article 9 of the Tax Law for the Month of July, 1937.

Application having been made by the above named Central Greyhound Lines, Inc., of New York for revision of additional tax assessed against it by the State Tax Commission under Section 186-a of Article 9 of the tax law for the month of July, 1937, and the State Tax Commission having heard the proofs offered on behalf of the said Central Greyhound Lines, Inc., of New York, in support of said application; does hereby determine after due consideration thereof that the additional tax heretofore assessed against the said Central Greyhound Lines, Inc., of New York, for the month of July, 1937, in the amount of One Thousand Six Hundred [fol. 54] Eighty-eight and 24/100 Dollars (\$1,688.24) should be affirmed, which said amount of One Thousand Six Hundred Eighty-eight and 24/100 Dollars (\$1,688.24) is hereby determined as the amount of additional tax which said Central Greyhound Lines, Inc., of New York, is liable to pay under the provisions of Section 186-a of Article 9 of the tax law for the month of July, 1937.

E. W. Burton, Deputy Director.

Countersigned: Carroll E. Mealey, Joseph M. Mesnig,  
Tax Commissioners.



## IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

## STIPULATION

It Is Stipulated That, in making its final determination [fol. 55] herein, the State Tax Commission found as a fact that, in the month of July, 1937, the petitioner received from bus transportation originating and terminating in this State but traversing without this State for some portion of the journey the sum of \$84,412.31, which amount was not included in the petitioner's return of gross taxable income for that month or taxed by the Tax Commission's original assessment, and found, as a fact, that 57.47% of the total mileage of such journeys was traversed within this State and 42.53% of such total mileage was traversed without this State.

It Is Further Stipulated That, in making its final determination, the State Tax Commission found, as conclusions of law, that section 186-a of the Tax Law applies to such bus transportation originating and terminating in this State; that that section, so construed, violates neither the Federal or State Constitutions, and that the receipts from such transportation should not be prorated according to the mileage traversed in and out of this State.

Dated March 6, 1934.

Bond, Schoeneck & King, Attorneys for Petitioner.  
Nathaniel L. Goldstein, Attorney-General, Attorney for Respondents.

## [fol. 56] STIPULATION WAIVING CERTIFICATION

It Is Stipulated that the foregoing are true and correct copies of the Order of Transference, Notice of Motion, Petition, Affidavit in support of Motion, Answer and Return of the Respondents and the exhibits annexed thereto, and Stipulation of the Parties, and the whole thereof, now on file in the office of the Clerk of the County of Albany; and certification thereof by said clerk, pursuant to section 616 of the Civil Practice Act, is hereby waived.

Dated July —, 1943.

Bond, Schoeneck & King, Attorneys for Petitioner.  
Nathaniel L. Goldstein, Attorney-General, Attorney for Respondents.

[fol. 57] IN COURT OF APPEALS OF NEW YORK

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner-Appellant,

vs.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M. MESNIG, constituting the State Tax Commission of the State of New York, Respondents.

NOTICE OF APPEAL TO COURT OF APPEALS

Please take notice that pursuant to leave granted by the Court of Appeals in the above entitled proceeding by an order duly made and filed in the Office of the Clerk of that Court on the 2nd day of March, 1944, the above named appellant hereby appeals to the Court of Appeals from the order of the Appellate Division, Third Department, entered in the office of the Clerk of said Appellate Division on the 13th day of November, 1943, which order affirmed a decision of the State Tax Commission dated January 27, 1943, and this appeal is from each and every part of said order.

[fol. 58]

Dated: March 27, 1944.

Yours, etc., Bond, Schoeneck & King, Attorneys for  
Petitioner-Appellant, Office and P. O. Address, 1400  
State Tower Building, Syracuse, New York.

To: County Clerk of Albany County, Court House, Albany, New York. John S. Herrick, Clerk of the Appellate Division, Court House, Albany, New York. Nathaniel L. Goldstein, Attorney-General, Attorney for Respondent, The Capitol, Albany, New York.

[fol. 59] IN COURT OF APPEALS OF NEW YORK

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner-  
Appellant,

vs.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M.  
MESNIG, constituting the State Tax Commission of the  
State of New York, Respondents.

ORDER GRANTING LEAVE TO APPEAL TO COURT OF APPEALS  
—March 2, 1944

A motion for leave to appeal to the Court of Appeals in  
the above cause having been heretofore made upon the part  
of the petitioner-appellant herein, and papers having been  
duly submitted thereon, and due deliberation thereupon  
had:

Ordered, that the said motion be and the same hereby  
is granted.

A Copy.

Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 60] IN SUPREME COURT OF NEW YORK, APPELLATE DIVI-  
SION

Present: Hon. James P. Hill, Presiding Justice, Hon.  
John C. Crapser, Hon. F. Walter Bliss, Hon. Christopher  
J. Heffernan, Hon. Gilbert V. Schenck, Associate Justices.

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner,

vs.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M.  
MESNIG, constituting the State Tax Commission of the  
State of New York, Respondents.

ORDER OF AFFIRMANCE—Entered November 13, 1943

The petitioner above named having heretofore and on or  
about the 17th day of February, 1943, served and filed a  
written petition under the provisions of Article 78 of the  
Civil Practice Act, wherein and whereby it sought to review  
[fol. 61] a final determination of the State Tax Commission  
made on or about the 27th day of January, 1943, confirming

the assessment of an additional tax under Section 186-a of the Tax Law for the month of July, 1937, against the petitioner; and the respondents having on or about the 23rd day of February, 1943, duly served and filed their answer and return; and an order having been duly entered on or about the 26th day of February, 1943, transferring the proceeding to this Court for disposition; and the issues raised having come on for hearing before this Court at the above named term thereof; and the cause having been argued and petitioner having appeared by Bond, Schoeneck & King, Esqs., (Lyle W. Hornbeck, Esq., of counsel), its attorney, and the respondents having appeared by Nathaniel L. Goldstein, Attorney-General of the State of New York (John C. Crary, Jr., Assistant Attorney-General, of counsel), their attorney; and due deliberation having been had thereon,

Now, on motion of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for respondents, it is

Ordered, That the said final determination of the State Tax Commission made on the 27th day of January, 1943, be, and the same hereby is, unanimously confirmed, with Fifty Dollars costs and disbursements.

John S. Herrick, Clerk.

[fol. 62] A true copy, John S. Herrick, Clerk, Ent. 11/13/43.

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION,  
THIRD JUDICIAL DEPARTMENT

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner,

vs.

CARROLL E. MEALEY, and OTHERS, constituting the State Tax  
Commission of the State of New York, Respondents

DECISION—November 10, 1943

Determination in all respects confirmed with \$50., costs and disbursements.

Opinion by Bliss, J.

All concur.



[fol. 63] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner,

vs.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M. MESNIG, constituting the State Tax Commission of the State of New York, Respondents.

Argued: September, 1943 Term. Decided: — 1943.

Hon. James P. Hill, P. J., Hon. J. C. Crapser, Hon. F. W. Bliss, Hon. C. J. Heffernan, Hon. G. V. Schenck, A.JJ.

Review in the nature of certiorari under Article 78 of the Civil Practice Act and related provisions of the Tax Law of a final determination of the State Tax Commission dated January 27, 1943 which denied revision of an assessment of additional taxes against the petitioner in the amount of \$1688.24 under section 186-a of the Tax Law.

[fol. 64] Messrs. Bond, Schoeneck & King, Attorneys for Petitioner, 1400 State Tower Bldg., Syracuse, N. Y.

Nathaniel L. Goldstein, Esq., Attorney-General of the State of New York, Attorney for Respondents, The Capitol, Albany, N. Y.

OPINION FOR CONFIRMATION

BLISS, J.:

The facts are undisputed. Petitioner, a New York Corporation is a utility engaged in the business of a common carrier by omnibus subject to the supervision of the New York State Department of Public Service. A portion of its business consists of transporting passengers from points in New York State to destinations in New York State over routes which lie in part in an adjoining state or states.

Section 186-a of the Tax Law imposes an emergency tax equal to two percent of its gross income upon every utility doing business in this state which is subject to the supervision of the State Department of Public Service, having an annual gross income in excess of \$500.00. The words "gross income" are defined by this statute to "mean and include receipts received in or by reason of any sale . . . made or service rendered for ultimate consumption or use by the purchaser in this state. . . ."

[fol. 65] The petitioning utility contends first that its business of transporting passengers between termini, both of which are in New York State over routes which lie in part in an adjoining state or states, is not the rendering of service for ultimate consumption or use by the purchaser in this state. It argues further that if receipts for the sale of utility services for use partly within and partly without the state are taxable under section 186-a when the journey originates and terminates in New York State, then the tax must be limited to the revenue attributable to the mileage in New York State, otherwise the statute is unconstitutional and a violation of the interstate commerce provision of the Federal Constitution.

It is to be noted first that the emergency tax imposed by section 186-a is laid upon the utility for the privilege of doing business within New York State. It is measured by the gross income of the utility received in or by reason of any sale made or service rendered for ultimate consumption or use by the purchaser in this state. The tickets entitling the passengers for the journeys here in dispute are apparently all sold and payment therefore received within New York State. The journeys contracted for begin and end in this state. Similar journeys of freight or passengers have been held not to be interstate commerce. (*Lehigh Valley Railway vs. Commonwealth of Pennsylvania*, 145 U. S. 192; *People ex rel. Cornell Steamboat Co. v. Sohmer*, 235 U. S. 549). It is a mere incident of a continuous journey between two points within New York State if a portion of the journey happens to lie within an adjoining state. What the passenger desires and the utility contracts to furnish is transportation from one point in New York State to another point in this state. His principal object is transportation between the termini. It is a matter of geography if physical or other reasons impel the utility to follow a route partly through another state. It is a service rendered to the purchaser in this state. If the journey were made in two or more distant parts with definite interruptions in another state so that it composed two or more journeys instead of one, the situation would be quite different. The income received from the services here in question comes within the statutory definition of gross income.

In the light of the federal decisions we see no merit to the contention of petitioner that section 186-a of the Tax

Law as above construed is a violation of the interstate commerce clause of the Federal Constitution. As stated above, this kind of transportation is not interstate commerce. (People ex rel. Cornell Steamboat Company vs. Sohmer, 235 U. S. 549; Lehigh Valley Railway Co. vs. Pennsylvania, 145 U. S. 192).

Finally, this is a tax against a certain corporation for the privilege of doing business in New York State. It is measured by their gross income. Consequently it is not a burden upon the particular business here sought to be exempted.

The determination should be in all respects confirmed with \$50.00 costs and disbursements.

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[fol. 67] STIPULATION WAIVING CERTIFICATION TO THE COURT  
OF APPEALS

Pursuant to Section 170 of the Civil Practice Act it is hereby stipulated that the foregoing consists of true and correct copies of the papers on appeal to the Appellate Division, Third Department, the Notice of Appeal to the Court of Appeals pursuant to leave, the Order of the Appellate Division appealed from, the Decision of the Appellate Division, Third Department and the Opinion of the Appellate Division, Third Department, all of which are now on file in the Office of the Clerk of the Appellate Division, Third Department, and that certification thereof is hereby waived.

Dated: March 27th, 1946.

Bond, Schoeneck & King, Esqs., Attorneys for Petitioner-Appellant. Nathaniel L. Goldstein, Attorney-General, Attorney for Respondent. By John C. Crary, Jr., Assistant Attorney General.

[fol. 68] IN SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO APPEAL TO COURT OF  
APPEALS—January 14, 1944

The above named petitioner, Central Greyhound Lines, Inc., of New York, having moved this Court for an order granting leave to the petitioner to appeal to the Court of Appeals from the order of this Court in the above entitled proceeding, entered herein on the 13th day of November, 1943 and the said motion having been submitted upon the papers, and due deliberation having been had thereon,

Now, on motion of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for the respondents, it is

[fol. 69] Ordered, that the said motion for leave to appeal to the Court of Appeals be, and the same hereby is, denied, without costs.

John S. Herrick, Clerk.

A true copy. John S. Herrick, Clerk. (Seal.)

Entered 1/14/44.

[fol. 69a] Sir:

Take notice that the within is a copy of Order duly filed and entered in the office of the Clerk of Albany County on the — day of January, 1944.

Yours, etc., Nathaniel L. Goldstein, Attorney-General.  
— — —, Attorney for Respondents, Office  
and Post Office Address, Capitol, Albany, N. Y.

To Bond, Schoeneck & King, Attorney for Petitioner, 1400  
State Tower Bldg., Syracuse, N. Y.



[fol. 70] IN COURT OF APPEALS OF NEW YORK

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner-  
Appellant,

VS.

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M.  
MESNIG, Constituting the State Tax Commission of the  
State of New York, Respondent.

NOTICE OF APPEAL

Please Take Notice That pursuant to leave granted by the Court of Appeals in the above entitled proceeding by an order duly made and filed in the Office of the Clerk of that Court on the 2nd day of March, 1944, the above named appellant hereby appeals to the Court of Appeals from the order of the Appellate Division, Third Department, entered in the office of the Clerk of said Appellate Division on the 13th day of November, 1943, which order affirmed a decision of the State Tax Commission dated January 27, 1943, and this appeal is from each and every part of said order.

Dated March 27, 1944.

Yours, etc., Bond, Schoeneck & King, Attorneys for  
Petitioner-Appellant. Office and P. O. Address,  
1400 State Tower Building, Syracuse, New York.

To County Clerk of Albany County, Court House, Albany,  
New York.

John S. Herrick, Clerk of the Appellate Division, Court  
House, Albany New York.

Nathaniel L. Goldstein, Attorney General, Attorney for  
Respondent, The Capitol, Albany, New York.

[fol. 71] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 23rd day of July, in the year of our Lord one thousand nine hundred and forty-six, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

REMITTITUR—July 23, 1946

[fol. 72] CENTRAL GREYHOUND LINES, INC., OF NEW YORK,  
Appellant,

ag't.

CARROLL E. MEALEY & ORS., &c., State Tax Commission of the  
State of New York, Respondent

Be It Remembered, That on the 10th day of April, in the year of our Lord one thousand nine hundred and forty-six, Central Greyhound Lines, Inc., of New York, the appellant in this cause, came here unto the Court of Appeals, by Bond, Schoeneck & King, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Carroll E. Mealey & ors., constituting the State Tax Commission of the State of New York, the respondents in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 73] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Charles A. Schoeneck, of counsel for the appellant, and by Mr. John C. Crary, Jr., of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

[fol. 74] Therefore, it is considered that the said order be affirmed with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid; by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE

Albany, July 23, 1946.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 74a] IN COURT OF APPEALS OF NEW YORK

Central Greyhound Lines, Inc., of New York, Appellant, v.  
Carroll E. Mealey, et al., Constituting the State Tax Commission, Respondents

Decided July 23, 1946

Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the third judicial department, entered November 13, 1943, in a proceeding under Article 78 of the Civil Practice Act (transferred to the Appellate Division by an order of the Supreme Court at Special Term, entered in Albany County) which unanimously confirmed a determination of the State Tax Commission affirming an assessment of an additional tax (entitled "Emergency Tax on the Furnishing of Utility Services").

Charles A. Schoeneck for appellant. Nathaniel L. Goldstein, Attorney-General (John C. Crary, Jr., and Wendell P. Brown of counsel), for respondents.

## OPINION

CONWAY, J.

There is presented for construction a part of section 186-a of the Tax Law. That section imposes an emergency tax of 2% upon the gross income of every utility doing business in this state which is subject to the supervision of the State Department of Public Service and which has an annual gross income in excess of \$500. The petitioner is a corporation engaged in business as a common carrier by omnibus and subject to the supervision of the Public Service Commission. It operates omnibusses both within and without the state. Subdivision 2, section (a) provides that the word "utility" includes every person subject to the supervision of the state department of public service with certain exceptions not material here. Subdivision 2, section (b) provides that the word "person" includes corporations.

Subdivision 2, section (c) provides: "The words 'gross income' mean and include receipts received in or by reason of any sale \* \* \* made or service rendered for ultimate consumption or use by the purchaser in this state \* \* \*."

The State Tax Commission included within petitioner's gross income, for the purpose of computing the emergency tax, receipts from sales of tickets for certain journeys which originated and terminated in New York State but which went through New Jersey and Pennsylvania. At the hearing before the Commission, the proof was limited to figure for July, 1937, with the stipulation that the result should be applicable to all the assessments for which application for revision had been filed.

The regular route of the busses of this company traveling between New York City and cities and villages in up-state New York is through New Jersey and Pennsylvania. A passenger who wishes to go to New York City from Buffalo, for instance, buys a single ticket marked "Buffalo to New York City". The bus travels within this State from Buffalo to Elmira; en route from Elmira to Towanda, Pennsylvania, it crosses the Pennsylvania State line and continues through Pennsylvania to Scranton. En route from Scranton, it crosses the New Jersey State line and continues through New Jersey to the Holland or Manhattan Tunnel and into New York City.

Petitioner's Exchange 7 (pp. 45-51 of the record), entitled "Receipts from Interstate Business Which Originates and



Terminates in New York State", breaks down the total receipts of July, 1937, for journeys originating and terminating in New York State into two figures: \$84,412.31 which represents receipts for total mileage covered on these trips, and \$48,508.97 which represents receipts for mileage covered within New York State on these trips. Receipts for journeys which begin at a point in New York State and terminate at a point outside of the State, or the reverse, are not included in this controversy.

The contention of the petitioner at the hearing before the Commission was that gross income to be taxed under this statute, if any, is limited to receipts representing mileage covered within New York State. The assessment of \$1,688.24 made by the Commission on the basis of total receipts for these journeys was affirmed upon the hearing. It was stipulated that the Commission found that (1) 42.53% of the total mileage of such journeys was traversed without the State, and 57.47% within the state; (2) that § 186-a of the Tax Law applies to bus transportation originating and terminating in this State; (3) that § 186-a so construed violates neither the Federal nor State Constitutions; and (4) that the receipts from such transportation should not be prorated according to the mileage traversed in and out of this State.

Petitioner advances two arguments. The first is that the language of section 186-a includes within "gross income" receipts for sales made or service rendered for ultimate consumption or use by the purchaser in this State, but does not include sales made or service rendered for consumption or use partly within and partly without the State. Petitioner argues that the word "ultimate" has no reference to the point of destination in transportation and may therefore be disregarded. It explains that that word was used in order to make the tax applicable to the resale of utility services by the original purchaser of such service (for instance, submeters), and at the same time to avoid pyramiding of taxes which would result from taxation of both wholesale and retail sales. There seems no reason to doubt this explanation of the word "ultimate" so far as it refers to submeterers. Indeed, the "Declaration of legislative intent" which accompanied the amendment of section 186a in 1941 (L. 1941, c. 137, §1) states: "It was intended to include persons and corporations which were directly in competition with ordinary utilities, such as, landlords and submeterers

who buy their services from other utilities and, in turn, resell such services. For that reason the tax was imposed on receipts from sales to ultimate consumers. Receipts from the sale of such utility services to submeterers were not taxed, but receipts of submeterers from their own customers were intended to be taxed."

[fol. 74c] However, that aspect of the use of the word "ultimate" does not render it necessary to ignore the word entirely in relation to transportation. Nor do I think the Legislature intended such a result. Subdivision 1 of the section distinguishes between utilities subject to the supervision of the department of public service and utilities not so subject. Submeterers and landlords are not subject to the supervision of the department of public service, but they are taxable under this statute. (Matter of Lacidem Realty Corp. v. Graves, 288, N. Y. 354.) A 2% tax of its "gross income" is imposed on every utility subject to the supervision of the department of public service; a 2% tax is also imposed on the "gross operating income" of "every other utility doing business in this state". Subdivision 2, section (c) defines "gross income" (which, as used in subd. 1, refers only to income of utilities under the supervision of the department, to which class petitioner belongs) as including receipts for "any sale . . . made or service rendered for ultimate consumption or use in this state". Subdivision 2, section (d) defines "gross operating income" (which, as used in subd. 1, refers to income of those not under the supervision of the department, to which class submeterers and landlords belong) as including receipts for any "sale . . . made for ultimate consumption or use . . . or for "furnishing for such consumption or use . . . in this state." Thus it appears that the word "ultimate" is used in both cases.

Petitioner also points out that "§ 186-a is not the first law of this State imposing a tax upon the gross income of utilities engaged in the transportation business. It cites Section 184 of the Tax Law which imposes a franchise tax on transportation and transmission corporations and associations. That statute includes within "gross earnings" "earnings from transportation or transmission business originating and terminating within this state" but excludes "earnings derived from business of an interstate character." Petitioner argues that since section 186-a does not use the phrase "earnings derived from business originating

and terminating within this state", section 186-a excepts this type of business from taxation.

We do not think it necessary to attempt to interpret section 186-a in the light of the language of section 184. It is not shown that the two sections are related in any way. Section 184 has been in force with frequent amendments since 1880. It imposes a franchise tax on corporations doing a particular kind of business: transportation or transmission. Section 186-a, in force since 1937, imposes an emergency tax on a great number of different utility services. We think that the language of the latter is broad enough to include the kind of business in issue here, and that it was not necessary in a statute which was made applicable to such a wide field to use the specific words used in section 184 in relation to transportation corporations.

Even aside from the use of the word "ultimate", we do not agree with petitioner's assertion that the service it renders in this transportation is consumed or used partly within and partly without the State. The Appellate Division pointed that out clearly.

[fol. 74d] The second argument of petitioner is that, if the statute is construed to tax this kind of business, it should be construed to tax only that proportion of receipts attributable to mileage within this State. Its petition in the Supreme Court alleged that a construction of section 186-a which includes within gross income the total receipts for these trips is "contrary to statute and unconstitutional", but petitioner does not urge here that such construction is unconstitutional. It states that the question is not one of constitutional taxing power but of statutory construction. It relies upon *Lehigh Valley Ry. v. Pennsylvania* (145 U. S. 192); *United States Express Co. v. Minnesota*, 223 U. S. 335; and *Hanley v. Kansas City So. Ry. Co.* (187 U. S. 617) as indicating that the statute ought to be limited to receipts for mileage covered within this State. It should be noted here that the petitioner cites on case where the United States Supreme Court has held that a tax on transportation originating and terminating in one State, but passing through another State must be limited to receipts for mileage covered within the State of origin and terminus. In the *Lehigh Valley* case, the State court had upheld a tax imposed on a railroad corporation, based on receipts for continuous transportation beginning and ending in in Pennsylvania but passing through New Jersey. It appears that

only that portion of transportation which was within Pennsylvania was taxed. The railroad objected to the tax on the ground that the transportation was interstate commerce. The question before the Supreme Court was " . . . simply whether, in the carriage of freight and passengers between two points in one State, the mere passage over the soil of another State renders that business foreign which is domestic. We do not think such a view can be reasonable entertained, and are of opinion that this taxation is not open to constitutional objection by reason of the particular way in which Philadelphia was reached from Mauch Chunk."

In *State of Minnesota v. United States Express Co.* (114 Minn. 346, 131 N. W. 489), a tax construed as a property tax was levied against the total transportation business done by defendant within the State. The Supreme Court of Minnesota held following the *Lehigh* case, that transportation originating and terminating in Minnesota but passing through another State was not interstate commerce. It then limited the tax, however, to the mileage within the State, saying: "This seems to us the safer rule and avoids any question of taxing interstate commerce . . . ." When the case reached the United States Supreme Court it was affirmed (223 U. S. 335). It is not accurate to say that the Minnesota Court held that the *Lehigh* case required that the tax be limited to revenue from mileage within the State, and that the Supreme Court affirmed that holding. As in the *Lehigh* case, the appellant in the Supreme Court objected to the taxation of any of the transportation which originated and terminated in Minnesota but passed through another State, on the ground that that kind of business was interstate commerce. The Supreme Court cited the *Lehigh* case as controlling on this issue not on the question of whether the tax should be prorated. It does not appear that the latter question was before the court.

*Hanley v. Kansas City So. Ry. Co.* (187 U. S. 617) cited by petitioner, is not applicable here, since it determined only that commerce extending from one State to another may not be regulated by either State; it specifically distinguished the *Lehigh* case as an example of State taxing power.

There is no constitutional objection to taxation of the total receipts here. This is not interstate commerce (*Lehigh Valley* case, *supra*; *People ex rel. Cornell Steamboat [fol. 74e] Co. v. Sohmer*, 235 U. S. 549; *Ewing v. Leaven-*



worth, 226 U. S. 464); and, since we think that this service is "service rendered for ultimate consumption or use by the purchaser in this state", we see no reason why the statute should be construed to limit the tax to receipts attributable to mileage covered within this State in the course of continuous transportation between points in this State.

The order should be affirmed with costs.

Loughran, Ch. J., Lewis, Desmond, Thacher and Fuld, JJ., concur; Dye, J., taking no part.

Order affirmed.

[fol. 75]. IN COURT OF APPEALS OF NEW YORK

Present, Hon. John T. Loughran, Chief Judge, presiding.

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Appellant,

vs.

CARROLL E. MEALEY and others, constituting the State Tax Commission of the State of New York, Respondents

ORDER AMENDING REMITTITUR, ETC.—October 15, 1946

A Motion for a re-argument of and to amend the remittitur in the above cause, having been heretofore made upon the part of the appellant herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion for reargument be and the same hereby is denied. Remittitur amended by adding thereto the following: "A question under the Federal Constitution was presented and passed upon by this Court, viz. whether Section 186-a of the Tax Law of the State of New York, as construed by the Tax Commission, is repugnant to the interstate commerce provision of the Federal Constitution, Article I, Section 8. This court held that the afore-said statute as so construed is not repugnant to that provision of the Federal Constitution."

A Copy.

Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 76] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

Present: Hon. Isadore Bookstein, Justice Presiding.

CENTRAL GREYHOUND LINES, INC., of New York, Petitioner,  
against

CARROLL E. MEALEY, JOHN P. HENNESSEY, and JOSEPH M.  
MESNIG, constituting the State Tax Commission of the  
State of New York, Respondents

ORDER ON REMITTITUR—August 2, 1946

The petitioner above named having appealed to the Court of Appeals from a final order of the Appellate Division of the Supreme Court, Third Judicial Department, in the above entitled proceeding, which said order confirmed a final determination of the respondents constituting the State Tax Commission of the State of New York made on or about the 27th day of January, 1943, assessing an additional tax under Section 186-a of the Tax Law for the month of July, 1937, against the petitioner, and which said final order was duly entered in the office of the Clerk of the Appellate Division, Third Department, on the 13th day of November, 1943, and the appeal having been duly argued at the Court of Appeals, and after due deliberation had thereon, the Court of Appeals having made its decision, and having ordered and adjudged that the order of the Appellate Division of the Supreme Court so appealed from be affirmed, with costs, and having further ordered that the proceedings and record herein be remitted to the Supreme Court, there to be proceeded upon according to law,

[fol. 77] Now, on reading and filing the remittitur from the Court of Appeals herein, and upon motion of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for the above named respondents, it is

Ordered, that the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court.

Isadore Bookstein, Justice of the Supreme Court.

[Title omitted]

## PETITION FOR APPEAL—Filed October 21, 1946

To the Chief Judge of the Court of Appeals of the State of New York:

Your Petitioner, Central Greyhound Lines, Inc. of New York, respectfully shows:

1. That your Petitioner is the appellant in the above-entitled cause.

2. That (a) on June 21, 1940, the Department of Taxation & Finance notified your Petitioner that it was liable for additional taxes in the sum of \$36,618.00, pursuant to Section 186-a of the Tax Law (Article 9—Corporation Tax); that by a petition verified July 6, 1940, your Petitioner applied to the Department of Taxation & Finance, State of New York, for a hearing before said Tax Commission, pursuant to the provisions of Section 186-a-6 of the Tax Law, for relief (fols. 73-80 of printed record on appeal in the Court of Appeals); that the petition, verified July 6, 1940, set forth that the additional taxes were assessed upon gross income of the Petitioner from sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania, and said petition further alleged that any assessment [fol. 79] ment upon such income was not authorized by statute and was illegal and void, and that said assessment included taxes which could not be lawfully demanded or collected; that the said petition further alleged that the assessment was illegal and void in that if any portion of the said income was subject to taxation under Section 186-a of the Tax Law, the income from services consumed and used within the States of New Jersey and Pennsylvania must be eliminated therefrom, and that the income from such services consumed and used without the State of New York constituted over fifty per cent of such income.

(b) That a formal hearing was held at the office of the Department of Taxation & Finance, Corporation Tax Bureau, Albany, New York, on the 20th day of October, 1942

(pp. 28-52 of printed record on appeal in the Court of Appeals); that on January 27, 1943, the Department of Taxation & Finance, Corporation Tax Bureau, issued its final determination that the additional tax theretofore assessed in this matter should be affirmed, and that your Petitioner was liable under the provisions of Section 186-a of Article 9 of the Tax Law for the sums so determined to be due (fols. 157-160 of the printed record on appeal in the Court of Appeals).

(c) That by a petition dated and verified February 16, 1943 your Petitioner instituted a proceeding against the above-named respondents setting forth that additional taxes were assessed upon gross income of the Petitioner from sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania; that the said petition further alleged that the respondents, after a hearing, refused to cancel or reduce said assessment, and the petition further [fol. 80] alleged that the "determination of the Commission made January 27, 1943 is contrary to statute, is unconstitutional, and is illegal and erroneous in that any assessment upon income of the petitioner from the sales of transportation services in interstate commerce originating and terminating within the State of New York but consumed and used partly within the States of New Jersey and Pennsylvania is illegal and void and is not authorized by statute, and said assessment is further illegal and void in that if any portion of said income is subject to tax under Section 186-a of the Tax Law the income from services consumed and used within New Jersey and Pennsylvania must be eliminated therefrom and that the income from such services consumed and used without the State of New York constitutes 42.53% of such income for the month of July, 1937" (fols. 20-21 of the printed record on appeal in the Court of Appeals).

(d) That the above-named respondents filed their answer and return, verified February 23, 1943, denying that the transportation mentioned in the petition constituted interstate commerce, and denying that the services therein mentioned were partly consumed or used in the States of New Jersey or Pennsylvania; and alleged further that the tax described in the petition and affirmed by the Commis-



sion's final determination was lawfully assessed against Petitioner pursuant to the provisions of Section 186-a of the Tax Law; that on February 26, 1943, by an order of a Justice of the Supreme Court, the proceeding instituted by your Petitioner before the Supreme Court, held in and for the County of Albany, was transferred for disposition to a term of the Appellate Division of the Supreme Court in the Third Judicial Department, in accordance with the provisions of Section 1296 of the Civil Practice Act, to the [fol. 81] end that the determination of the State Tax Commission might be reviewed upon the law and upon the facts (fol. 8 of the printed record on appeal in the Court of Appeals); that on March 6, 1943, it was stipulated between the parties above named that the State Tax Commission, in making its final determination, had found as Conclusions of Law (1) that Section 186-a of the Tax Law applied to such bus transportation originating and terminating in this State, and (2) that the section, so construed, "violates neither the Federal or State Constitutions, and (3) that the receipts from such transportation should not be pro-rated according to the mileage traversed in and out of this State" (fol. 164 of the printed record on appeal in the Court of Appeals).

(e) That on September 13, 1943, the Appellate Division, Third Department, unanimously affirmed the determination of the State Tax Commission by an order of that date, and the said Appellate Division handed down an Opinion for Confirmation (fols. 187-198 of the printed record on appeal in the Court of Appeals); that the said Appellate Division set forth in their opinion as follows:

"In the light of the federal decisions we see no merit to the contention of petitioner that section 186-a of the Tax Law as above construed is a violation of the interstate commerce clause of the Federal Constitution. As stated above, this kind of transportation is not interstate commerce. (People ex rel. Cornell Steamboat Company vs. Sohmer, 235 U. S. 549; Lehigh Valley Railway Co. vs. Pennsylvania, 145 U. S. 192). Finally, this is a tax against a certain corporation for the privilege of doing business in New York State. It is measured by their gross income. Consequently it is not a burden upon the particular business here sought to be exempted" (fols. 197-198 of the printed

record on appeal in the Court of Appeals; official report—266 A. D. 648).

[fol. 82] (f) That the Appellate Division, Third Department, ~~denied leave to appeal to the Court of Appeals by an order entered in the office of the Clerk of the Appellate Division on January 14, 1944, and thereafter, on March 2, 1944, the Court of Appeals issued an order granting leave to appeal to the Court of Appeals (fols. 175-177 of the printed record on appeal in the Court of Appeals).~~

(g) That thereafter, and on June 6, 1946, this said cause was argued before the Court of Appeals, and the opinion of the said Court was rendered on July 23, 1946. The Court of Appeals stated in its opinion:

"There is no constitutional objection to taxation of the total receipts here. This is not interstate commerce (Lehigh Valley case, *supra*; *People ex rel. Cornell Steamboat Company vs. Sohmer*, 235 U. S. 549; *Ewing vs. Leavenworth*, 226 U. S. 464), and since we think that this service is a service rendered for ultimate consumption or use by the purchaser in this State, we see no reason why the statute should be construed to limit the tax to receipts attributable to mileage covered within this State in the course of continuous transportation between points in this State";

that on October 15, 1946, by an order of said Court, its remittitur was amended by adding the following:

"A question under the Federal Constitution was presented and passed upon by this Court, viz. whether Section 186-a of the Tax Law of the State of New York, as construed by the Tax Commission, is repugnant to the interstate commerce provision of the Federal Constitution, Article I, Section 8. This court held that the aforesaid statute as so construed is not repugnant to that provision of the Federal Constitution."

3. That as appears from the foregoing recital of the course of the proceedings, the record on appeal in the Court of Appeals, and examination of the entire record of the case from its inception before the Department of [fol. 83] Taxation & Finance to and through the Court of Appeals, there was drawn in question the validity of a

statute of New York State (Section 186-a of the Tax Law) on the ground of its being repugnant to the Constitution of the United States, and particularly Article I, Section 8 thereof, and it appears that the decision of the Department of Taxation & Finance, the Appellate Division of the Supreme Court, and the Court of Appeals was in favor of the validity of said statute, Section 186-a of the Tax Law.

4. That the Court of Appeals for the State of New York is the highest Court of said State in which a decision in this matter can be had.

5. That in the said cause there is drawn in question the validity of a statute and the determination of the State Tax Commission of the State of New York, on the ground that the said statute is repugnant to the Constitution and laws of the United States, and that the said determination of the State Tax Commission of the State of New York is repugnant to the Constitution and laws of the United States, and the decision is in favor of the validity of the said statute and the determination of the State Tax Commission of the State of New York, notwithstanding your Petitioner's contention that said statute violates the Constitution of the United States, Article I, Section 8 thereof, and that the determination of the State Tax Commission of the State of New York was unconstitutional in that it violated the said provision of the Constitution of the United States.

6. That therefore, in accordance with Section 237(a) of the Judicial Code (U. S. C. A., Title 28, Sec. 344), and in accordance with the Rules of the Supreme Court of the United States, your Petitioner respectfully shows this Court that the case is one in which, under the legislation [fol. 84] in force when the Act of January 31, 1928 was passed, to wit, under Section 237(a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a Writ of Error, as a matter of right.

7. That the errors upon which your Petitioner claims to be entitled to an appeal are more fully set forth in the Assignment of Errors, filed herewith, and accompanying this petition, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your Petitioner prays for an allowance of an appeal from the Court of Appeals for the State of New

York, the highest Court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the Court of Appeals for the State of New York may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Court of Appeals for the State of New York under his hand and seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and your Petitioner further prays that the proper order relating to the required security to be required of it be made.

Dated October 21, 1946.

Bond, Schoeneck & King, Attorneys for Petitioner.  
Office and P. O. Address 1400 State Tower Building,  
Syracuse, New York.

[fol. 85] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed October 21, 1946

The Petitioner-Appellant assigns the following errors in the record and proceedings in this cause:

1. The Court of Appeals for the State of New York erred in refusing to reverse, and in affirming the confirmation, final order and determination of the Appellate Division Supreme Court, and the Department of Taxation and Finance, State of New York.

2. The Court of Appeals of the State of New York erred in refusing to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme Court on the grounds that there is no Constitutional objection to the taxation of the total receipts involved in the cause.

3. The Court of Appeals for the State of New York erred in the refusal to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme



Court on the grounds that Section 186-a of the tax law of the State of New York was valid, and was valid as applied to the Petitioner.

[fol. 86] 4. The Court of Appeals of the State of New York erred in refusing to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme Court on the grounds that the tax laid against the Petitioner was valid.

5. The Court of Appeals of the State of New York erred in refusing to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme Court on the grounds that the transportation involved, in this cause, is not consumed or used partly within or partly without the State of New York.

6. The Court of Appeals of the State of New York erred in refusing to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme Court on the grounds that there is no Constitutional objection to the taxation of that portion of the total receipts attributable to mileage without the State of New York.

7. The Court of Appeals of the State of New York erred in refusing to reverse and in affirming the determination of the Department of Taxation and Finance, State of New York, and the order of the Appellate Division Supreme Court on the grounds that Section 186a of the tax law of the State of New York, as construed, did not violate the Constitutional Rights of the Petitioner.

8. The Court of Appeals of the State of New York erred in refusing to hold that Section 186a of the tax law was invalid on the ground of its being repugnant to the Constitution of the United States, Article I, Section 8.

9. The Court of Appeals of the State of New York erred in refusing to hold that Section 186a of the tax law of the State of New York, as construed, was repugnant to the [fol. 87] Constitution of the United States, Article I, Section 8.

10. The Court of Appeals of the State of New York erred in refusing to hold that the tax assessed and

as laid against the Petitioner was repugnant to the Constitution of the United States.

11. The Court of Appeals of the State of New York erred in affirming the conclusions of law found by the New York State Tax Commission as affirmed by the Appellate Division of the Supreme Court that Section 186-a of the law applies to such bus transportation originating and terminating in the State of New York.

12. The Court of Appeals of the State of New York erred in affirming the conclusions of law found by the New York State Tax Commission as affirmed by the Appellate Division of the Supreme Court that Section 186-a, so construed, as applicable to bus transportation originating and terminating in New York State violates neither the Federal or State Constitutions.

13. The Court of Appeals of the State of New York erred in affirming the conclusions of law found by the New York State Tax Commission as affirmed by the Appellate Division of the Supreme Court that the receipts from transportation originating and terminating in the State of New York should not be pro-rated according to the mileage traversed in and out of the State of New York.

Wherefore, on account of the errors hereinabove assigned Petitioner prays that the said judgment, and final order for the Court of Appeals for the State of New York, dated the 23rd day of July 1946, in the above entitled cause be reversed and judgment entered in favor of the appellant.

Dated October 21, 1946.

Bond, Schoeneck & King, Attorneys for Petitioner-Appellant, Office and P. O. Address, 1400 State Tower Building, Syracuse, New York.

[fol. 88] SUPREME COURT OF THE UNITED STATES

CENTRAL GREYHOUND LINES, INC., OF NEW YORK, Petitioner-  
Appellant;

against

CARROLL E. MEALEY, JOHN F. HENNESSEY and JOSEPH M.  
MESNIG, constituting the State Tax Commission of the  
State of New York, Respondents

ORDER ALLOWING APPEAL—October 21, 1946

The petition of Central Greyhound Lines, Inc., of New York, the appellant in the above-entitled cause for an appeal in the above cause to the Supreme Court of the United States from the final order and final judgment of the Court of Appeals for the State of New York, having been filed with the Clerk of this Court and presented herein, accompanied by Assignment of Errors and Statement as to Jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be, and it hereby is, allowed to the Supreme Court of the United States from the final order and final judgment, dated the 23rd day of July, 1946, of the Court of Appeals for the State of New York, as prayed in said petition; and that the Clerk of the Supreme Court of the State of New York, in and for the County of Albany shall within forty days from this date make and transmit to the Supreme Court of the United States, under his hand and seal of said Court, a true copy of the material parts of the record herein which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

[fol. 89] It is further ordered that the said appellant shall give a good and sufficient cost bond in the sum of \$500.00, that said appellant shall prosecute said appeal, to effect and answer all costs if it fails to make this plea good.

Dated: October 21, 1946.

John T. Loughran, Chief Judge of the Court of Appeals for the State of New York.

[fols. 90-93] Bond on appeal for \$500.00 approved and filed October 25, 1946, omitted in printing.

[fol. 94] Citation in usual form showing service on Nathaniel L. Goldstein omitted in printing.

[fol. 95] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION CONCERNING RECORD—Filed November 27, 1946

It is hereby stipulated by and between the attorneys for the above named Petitioner-Appellant and the above named Respondents-Appellées that the following shall constitute the portions of the record, in the above entitled matter, to be included in the transcript:

1. The printed record on appeal in the Court of Appeals State of New York, consisting of 67 pages, said record being the record on appeal before the Court of Appeals, State of New York, upon which an opinion was rendered by that Court in 296 N. Y. 18 (decided July 23, 1946).

2. All motion papers captioned in the Appellate Division, Third Department, on the application of the above named Petitioner-Appellant, for leave to appeal to the Court of Appeals, said application being denied by an order entered in the office of the clerk of the Appellate Division on January 14, 1944.

3. All motion papers captioned in the Court of Appeals on the application of the above named Petitioner-Appellant, for leave to appeal to the Court of Appeals, said application being granted by an order of the said Court of Appeals, dated March 2, 1944.

[fol. 96-97] 4. The remittitur of the Court of Appeals dated July 23, 1946, and the order on said remittitur dated August 2, 1946, filed in the Office of the Clerk of the County of Albany, on August 2, 1946.

5. The Notice of Motion dated October 3, 1946, together with the petition verified the same date on the application for an order to amend the remittitur and for the further



relief requested in said petition, and the affidavit in opposition thereto:

6. The Order of the Court of Appeals dated October 15, 1946, denying the motion for re-argument and amending the remittitur by the inclusion of the specific language therein set forth.

Dated November 25, 1946, Syracuse, New York.

Bond, Schoeneck & King, Attorneys for Petitioner-Appellant. Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Respondents-Appellees.

[fol. 98] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 745

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed December 9, 1946

Comes now the appellant in the above entitled cause and states that it adopts its Assignment of Errors, dated October 21, 1946, duly filed in the office of the Clerk of this Court, as its Statement of the Points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

Dated December 7, 1946.

Edward Schoeneck, Counsel for Appellant, Central Greyhound Lines, Inc. of N. Y. Office & Post Office Address, 1400 State Tower Building, Syracuse, New York.

[fol. 99] STATE OF NEW YORK,  
County of Onondaga,  
City of Syracuse, ss:

Tracy H. Ferguson, being duly sworn, deposes and says: That on the 7th day of December, 1946, he served the annexed Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed, in the above entitled action, on Nathaniel L. Goldstein, Attorney Gen-

eral, Albany, New York, by enclosing a true and correct copy of said Statement and Designation in a securely sealed, postpaid envelope addressed to said Attorney General at his post office address, Albany, New York, and depositing the same in a mail chute regularly maintained by the United States Government in the State Tower Building, Syracuse, New York.

Tracy H. Ferguson.

Sworn to before me this 7th day of December, 1946.  
Chester H. King, Jr.

[fol. 100] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1946

No. 745

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION  
OF JURISDICTION—December 23, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits. The case is transferred to the summary docket.

Endorsed on cover: File No. 51,609, New York Court of Appeals, Term No. 745. Central Greyhound Lines, Inc., of New York, Appellant, vs. Carroll E. Mealey, John F. Hennessey and Joseph M. Mesnig, Constituting the State Tax Commission of the State of New York. Filed December 5, 1946. Term No. 745 O. T. 1946.

(8955)